

AMENDED IN ASSEMBLY AUGUST 16, 2005

AMENDED IN ASSEMBLY JULY 5, 2005

AMENDED IN ASSEMBLY JUNE 27, 2005

AMENDED IN ASSEMBLY JUNE 16, 2005

AMENDED IN ASSEMBLY JUNE 14, 2005

AMENDED IN SENATE MARCH 31, 2005

SENATE BILL**No. 118**

Introduced by Senator Chesbro

(Principal coauthors: Senators Florez and Perata)

(Principal coauthors: Assembly Members Evans, Jerome Horton, and Nunez)

(Coauthors: Senators Battin, Bowen, Campbell, Cox, Denham, Dunn, Figueroa, Machado, Maldonado, Soto, and Torlakson)

(Coauthors: Assembly Members Aghazarian, Benoit, Berg, Bermudez, Chavez, Cohn, Garcia, Jones, Karnette, Laird, Leslie, Lieber, McCarthy, Mountjoy, Nakanishi, Nation, Nava, Pavley, Salinas, and Wolk)

January 27, 2005

An act to amend Section 23661.2 of, and to add Section 23661.3 to, the Business and Professions Code, and to amend Section 32101 of the Revenue and Taxation Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

SB 118, as amended, Chesbro. Alcoholic beverages: licenses and fees.

The Alcoholic Beverage Control Act imposes upon the Department of Alcoholic Beverage Control the responsibility to administer and

enforce state laws with respect to alcoholic beverages, including the implementation of alcoholic beverage licensing. Among other things, the act authorizes any unlicensed adult resident of this state to apply to the department and be issued a permit to receive a shipment of wine from any state that allows adult residents of that state to receive shipments of wine from this state, as provided. The act also provides that an individual or licensee in a state that affords California licensees or individuals an equal reciprocal shipping privilege, may ship, for personal use, and not for resale, no more than 2 cases of wine per month to any adult resident in this state.

This bill would eliminate the requirement that an unlicensed adult apply and be issued a permit to receive a shipment of wine.

This bill would also provide that a licensed winegrower who obtains a wine direct shipper permit, as described, may sell and ship wine directly to a California resident, for personal use, under specific conditions. Knowing violation of these provisions would be a misdemeanor.

By creating a new crime, this bill imposes a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 23661.2 of the Business and
- 2 Professions Code is amended to read:
- 3 23661.2. Notwithstanding any other law, an individual or
- 4 retail licensee in a state that affords California retail licensees or
- 5 individuals an equal reciprocal shipping privilege, may ship, for
- 6 personal use and not for resale, no more than two cases of wine
- 7 (no more than nine liters each case) per month to any adult
- 8 resident in this state. Delivery of a shipment pursuant to this
- 9 subdivision shall not be deemed to constitute a sale in this state.

The shipping container of any wine sent into or out of this state under this section shall be clearly labeled to indicate that the container cannot be delivered to a minor or an intoxicated person.

SEC. 2. Section 23661.3 is added to the Business and Professions Code, to read:

23661.3. (a) Notwithstanding any law, rule, or regulation to the contrary, any person currently licensed in this state or any other state as a winegrower who obtains a wine direct shipper permit pursuant to this section may sell and ship wine directly to a resident of California, who is at least 21 years of age, for the resident's personal use and not for resale.

Before sending any shipment to a resident of California, the wine direct shipper permitholder must:

- (1) File an application with the department.
- (2) Pay a ten-dollar (\$10) annual registration fee if the winegrower is not currently licensed by the department.
- (3) Provide the department its California alcoholic beverage license number or a true copy of its current alcoholic beverage license issued by another state.
- (4) Obtain from the department a wine direct shipper permit.
- (5) Obtain a valid seller's permit pursuant to Article 2 (~~commencing with Section 6066~~) of Chapter 2 of Part 1 of *seller's permit or register with the State Board of Equalization pursuant to Part 1 (commencing with Section 6001) of Division 2* of the Revenue and Taxation Code.

(b) A wine direct shipper permit authorizes the permitholder to do all of the following:

- (1) Sell and ship wine to any person 21 years of age or older for his or her personal use and not for resale.
- (2) Ship wine directly to a resident in this state only in containers that are conspicuously labeled with the words: "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 YEARS OR OLDER REQUIRED FOR DELIVERY."
- (3) Ship wine only if the permitholder requires the carrier to obtain the signature of any individual 21 years of age or older before delivering any wine shipped to an individual in this state.
- (4) If the permitholder is located outside of this state, report to the department no later than January 31 of each year, the total amount of wine shipped into the state during the preceding calendar year under the wine direct shipper permit.

(5) If the permitholder is located outside of this state, pay to the State Board of Equalization all sales and use taxes, and excise taxes on sales to residents of California under the wine direct shipper permit, ~~the amount of those taxes to be calculated as if the sale were made in California at the location of the delivery.~~ *shipper permit. For excise tax purposes, all wine sold pursuant to a direct shipper permit shall be deemed to be wine sold in this state.*

(6) If located within this state, provide the department any necessary additional information not currently provided to ensure compliance with this section.

(7) Permit the department or the State Board of Equalization to perform an audit of the wine direct shipper permitholder's records upon request.

(8) Be deemed to have consented to the jurisdiction of the department or any other state agency and the California courts concerning enforcement of this section any related laws, rules, or regulations.

(d) A wine direct shipper permitholder located outside of the state may annually renew its permit with the department by paying a ten-dollar (\$10) renewal registration fee and providing the department with a true copy of its current alcoholic beverage license issued by another state. A wine direct shipper permitholder located in California shall renew its wine direct shipper permit in conjunction with its master license. For purposes of this section, "master license" means a winegrower's license issued by the department.

(e) The department and the State Board of Equalization may promulgate rules and regulations to effectuate the purposes of this law.

(f) The department may enforce the requirements of this section by administrative proceedings to suspend or revoke the wine direct shipper permit, and the department may accept payment of an offer in compromise in lieu of suspension as provided by this division. Any hearing held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code against a permitholder outside of California shall be held in Sacramento.

(g) Sales and shipments of wine direct to consumers in California from winegrowers who do not possess a current wine

1 direct shipper permit from the department are prohibited. Any
2 person who knowingly makes, participates in, transports,
3 imports, or receives such a shipment is guilty of a misdemeanor
4 pursuant to Section 25617.

5 SEC. 3. Section 32101 of the Revenue and Taxation Code is
6 amended to read:

7 32101. The issuance of any manufacturer's, winegrower's,
8 wine blender's, distilled spirits manufacturer's agent's,
9 rectifier's, wholesaler's, importer's, customs broker's license, or
10 wine direct shipper permit under Division 9 (commencing with
11 Section 23000) of the Business and Professions Code shall
12 constitute the registration of the person to whom the license or
13 permit is issued as a taxpayer under this part. Upon the issuance
14 of any ~~such license~~ *of these licenses* the Department of Alcoholic
15 Beverage Control shall furnish a copy thereof to the board.

16 SEC. 4. No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution because
18 the only costs that may be incurred by a local agency or school
19 district will be incurred because this act creates a new crime or
20 infraction, eliminates a crime or infraction, or changes the
21 penalty for a crime or infraction, within the meaning of Section
22 17556 of the Government Code, or changes the definition of a
23 crime within the meaning of Section 6 of Article XIII B of the
24 California Constitution.